

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CM/ECF INITIATIVE
(Revised Sept. 2002)

Commentary Supplementing Administrative Procedures¹

The following information supplements the Bankruptcy Court for the District of New Jersey's *Local Rule Amendments* (as adopted May 30, 2001), *General Order of March 27, 2002*, and *Administrative Procedures For Filing, Signing and Verifying Documents by Electronic Means (collectively the "Administrative Procedures")* as they relate to the Court's Case Management /Electronic Case Files Initiative (CM/ECF), by highlighting certain of the issues raised.

This information is provided as a training tool, so as to provide CM/ECF Participants with greater clarity and depth of understanding regarding the scope, intention and/or background of these documents which govern the practices and procedures for electronic case filing in this Court. Any further questions should be addressed to the Court's Help Desk at the telephone number(s) referenced in the User's Guide or through the internet at cmecf_helpdesk@njb.uscourts.gov.

I. THE CHAIN OF AUTHORITY AND BACKGROUND INFORMATION -

1. The "chain of authority" for electronic case filing begins at **Fed. F. Bankr.P. 5005(a)(2)** which authorizes a court "by local rule" to permit documents to be filed, signed or verified by electronic means. . ." In New Jersey, two local bankruptcy rules generally authorize the CM/ECF Initiative. First, **D.N.J. LBR 5005-1- *Filing and Transmittal of Papers***, indicates that "in cases in which electronic filing is utilized, documents shall be filed, signed or verified by means that are consistent with any general orders issued by the Court." Second, an amendment to **D.N.J. LBR 1001-1 - *Scope of Rules***, adding paragraph (c), indicates that the Court may issue general orders and administrative procedures to supplement the Local Rules, and that copies of same may be obtained from the Clerk through the Court's web site, www.njb.uscourts.gov.

The comment to **D.N.J. LBR 1001-1** as cited above, specifically notes that the amendment is intended to allow the Court to issue general orders whose purpose is to authorize the Court to establish practices and procedures for the filing, signing, and verification of documents by electronic means. The Court's *General Order of March 27, 2002*, in its first decretal paragraph then approves *The Administrative Procedures*.

¹ Portions of the above Commentary reflect comments to the *Model Local Rules* prepared by the Judicial Conference Committee on Court Administration and Case Management's Subcommittee on Electronic Filing Rules, May 2001. For further information, also reference the notes accompanying the Court's Power Point Presentation entitled *Electronic Case Filing Local Rules and Administrative Procedures*, which is available on the Court's web site.

These ***Administrative Procedures*** set forth *inter alia*, the procedure for registration of approved participants (“Participants”) and for distribution of passwords to permit electronic filing and notice of pleadings and other papers. The Court’s ***Administrative Procedures***, in turn, reference the *User’s Guide* which is intended to provide Participant training information of a more technical nature. Supplemental information concerning the provisions of the Court’s ***Administrative Procedures*** is set forth herein.

2. Reference to a ***General Order*** of the Court has been incorporated into the Local Rule amendments adopted May 30, 2001 at the recommendation of the Court’s Local Rules and Procedures Subcommittee, for the following reasons: (1) All ECF Courts to date have authorized their Administrative Procedures through the use of a standing or general order, as a necessary tool in the implementation process; (2) the ease of accessibility of such an Order through the Court’s Web site; (3) the flexibility provided by the use of a General Order as well as Administrative Procedures should future modifications become necessary.

II. THE COURT'S ADMINISTRATIVE PROCEDURES

Proposed Treatment of Issues

1. Scope of Electronic Filing -

Designation of Cases.

All pending and newly filed cases and adversary proceedings shall be assigned to the Electronic Case Filing System ("ECFS") as of the effective date of the **March 27, 2002 General Order**. The Clerk will continue to accept paper filings although all parties are encouraged to use ECFS whenever possible. (**Admin.Proc. I.A.**)

Comment

1. **Assignment of cases** - Courts are to designate which cases will be assigned to the electronic case filing system (ECFS). A presumption exists that all documents filed in cases assigned to the electronic case filing system should be electronically filed. Some courts have designated certain types of cases for electronic filing, while some have determined that all cases are appropriate for electronic filing. The Bankruptcy Court for the District of New Jersey allows for both cases and adversary proceedings to be electronically filed, without limitation by Chapter, size of case, etc.

2. **Electronic Filing not mandatory** - The Bankruptcy Court for the District of New Jersey does *not* make electronic filing mandatory. The Judicial Conference has indicated that mandatory electronic filing appears to be inconsistent with **Fed.R.Bankr.P. 5005**, which states that a court "may permit" papers to be filed electronically, and provides that the clerk "shall not refuse to accept for filing any paper presented . . . solely because it is not presented in proper form." However, the Federal Rules clearly permit a court to strongly encourage lawyers to participate in electronic case filing, and the Court's ***Administrative Procedures*** are written to provide such encouragement.

From the date of implementation forward, the Bankruptcy Court for the District of New Jersey will incorporate all pending as well as newly filed cases into CM/ECF. Reference to "pending" cases refers to cases which were active as of the date and time of implementation. As to pending cases, a case docket in its entirety will be available electronically. In addition, all documents filed in a pending case subsequent to the date ECFS goes live, as well as documents filed in new cases, will be electronically entered into the ECFS, either through direct electronic filing of the documents by Participants or by the imaging (scanning) of conventionally received documents by Court staff .

3. **Privacy Concerns** - Electronic case filing raises privacy concerns. Electronic case files can be

more easily accessible than traditional paper case files, so there is a greater risk of public dissemination of sensitive information found in case files. The Bankruptcy Court for the District of New Jersey, like other Bankruptcy Courts around the country, is investigating and evaluating the privacy concerns attendant to electronic case files, and is working to develop a policy per the ***Recommendations of the Judicial Conference on Electronic Case File Availability and Internet Use***, which were adopted by the Judicial Conference on September 19, 2001.

In the *interim*, until the national recommendations are implemented through, *inter alia*, the revision of national forms, in an effort to address privacy concerns on a case by case basis, the ***General Order of March 27, 2002***, allows for the issuance of a protective order upon application. In addition, the Judicial Conference is considering enhancement of the sealing provisions of **11 USC section 107(b)** to recognize privacy concerns as a legitimate basis for placing a document under seal.

2. Eligibility, Registration, Passwords

Each approved participant (“Participant”), will be assigned one or more login and password combinations to permit electronic filing and retrieval of pleadings and other documents in the ECFS. The Court reserves the right to change the assigned ECFS login from time to time as may become necessary.

A registration form will be available electronically, and shall be submitted for each Participant.

All registration forms shall be electronically mailed to the Office of the Clerk, at the following e-mail address:
cmecf_helpdesk@njb.uscourts.gov.

Each Participant registering for the ECFS will receive notice by electronic mail from the Office of the Clerk indicating the Participant’s assigned ECFS login and password combination. This login and password combination, as initially assigned, will be used for training purposes only, and will not be activated for use on the ECFS until the Participant is approved for use on the ECFS by the Court in accordance with the training as set forth in the ECFS User’s Guide. Only the Participant, or an authorized representative, may receive the electronic notice of the assigned login and password combination.

Participants may find it desirable to change their passwords periodically. This can be done as set forth in the ECFS User’s Guide. In the event a Participant believes that the security of an existing password has been compromised, the Participant shall give immediate notice to the Clerk of the Court in order to prevent access to the ECFS by use of that password. Such notice may be given to the Clerk of the Court either by telephone to the telephone number(s) set forth in the Attorney User’s Guide for such purpose, or by electronic mail to cmecf_helpdesk@njb.uscourts.gov.

Participants in the ECFS, by accepting a login and password from the Court, waive the right to receive notice by first class mail, including notice pursuant to Fed. R. Bank.P. 2002(a), and agree to receive notice electronically. Participants in the ECFS, by accepting a login

and password from the Court, also waive their right to service by personal service or first class mail and agree to electronic service, except with regard to service of process of a summons and complaint in an adversary proceeding under Fed. R. Bank.P. 7004 and the initiating motion in a contested matter under Fed. R. Bank.P. 9014. The waiver of service and notice by first class mail includes notice of the entry of an order or judgment under Fed. R. Bank. P. 9022.
(Admin. Proc. I.B.)

Comment

1. Identity of Potential Participants - At the current juncture, only attorneys and U.S. trustees and their assistants, as well as private trustees, are permitted to be Participants in the Bankruptcy Court for the District of New Jersey's ECF System. ~~Eventually, the Court may wish to permit others, e.g., claims filers, to participate.~~ As the System continues to evolve subsequent to the April 1, 2002 implementation date, the Court continues to investigate the idea of expanding the identity of potential participants to include others, e.g. claims filers, and pro se litigants.

With respect to the question of the assignment of a login and password to attorneys located out of state, essentially, *pro hac vice admission* is governed in this **District by D.N.J. LBR 2090-1(b); and D.N.J. L.Civ.R. 101.1** which is made applicable pursuant to **D.N.J. LBR 1001-1** (see also **New Jersey Court Rule 1:28-2(a) for requirement that payment be made to the New Jersey Lawyers' Fund for Client Protection**). Looking to the District Court local rule for guidance on this issue, the Court emphasizes that since only attorneys admitted to practice before this Court may sign and file pleadings and other papers, to provide an applicant admitted *pro hac vice* with a login and password (i.e. the ability to electronically sign and file a document in this court for all purposes including those under Rule 9011), would contravene our local rule requirements.

Out of state attorneys will follow the same local counsel requirements as they do currently. It is simply that in an electronic context, only the local/NJ attorney will be provided with the login and password for signature purposes.

With respect to the related issue as to notice, it is not incumbent upon the Court to provide paper (or electronic) notice to attorneys admitted *pro hac vice*. The Court satisfies its responsibilities by noticing the local counsel. Sometime in the future, the Court may consider providing notice (thru multiple e mails) as a courtesy to out of state attorneys.

Since *pro hac vice* admission is a creature of local New Jersey District Court Rule as referenced above, upon a case specific inquiry, the Clerk's Office of the District Court has advised that out-of-state attorneys, employed by *municipal* governments, as opposed to agencies of the federal government, must still obtain local counsel for purposes of filing papers in both the District and Bankruptcy Courts, and that the exception set forth at L.Civ.R. 101.1(f) does not apply to same.

2. Waiver of Notice and Service - As set forth below, once an individual registers as a Participant with the ECFS, the individual waives certain rights and conditions and agrees to be bound by certain other rights and conditions. Specifically, a Participant consents to electronic notice and service of certain documents, as set forth below.

Significantly, this consent to receive electronic notice and service is intended to cover the full range of notice and service *except* those documents to which the service requirements of **Fed.R.Bankr.P. 7004** apply.

Essentially, this exception reflects that:

(A) The requirements of conventional *service* for Complaints (i.e Fed. R. Bankr.P. 7004 - Process; Service of Summons, Complaint) and initiating papers in a contested matter (i.e. Fed. R. Bankr.P. 9014 Contested Matters) have been met;

(B) A final sentence was added to indicate that this waiver of service and notice by first class mail, includes notice by mail of the entry of an Order under **Fed. R. Bankr.P. 9022**.

These provisions operate independently from the notices sent by the Bankruptcy Noticing Center under Fed.R.Bankr.P. 9036.

With respect to the Clerk's responsibility pursuant to **Fed. R. Bankr.P. 9022(a)** to serve notice of the entry of a judgment or order upon "contesting parties," two points have been made clear subsequent to implementation of ECF:

(A) Although the Court continues to serve actual copies of the judgment or order through the Bankruptcy Noticing Center (BNC), notice of the *entry* of a judgment or order, rather than the judgment or order itself will suffice for purposes of satisfying Rule 9022 obligations, *see*

and

(B) Given the fact that there is no definition of "contesting parties" for purposes of service of notice of the entry of a judgment or order under Rule 9022, the Administrative Office of the United States Courts (AO) has advised that service of judgments and orders should be made on the following persons and entities:

- i) The debtor and debtor's attorney;
- ii) The pro se movant or movant's attorney;
- iii) Any person or entity filing an objection to the motion;
- iv) The Office of the United States Trustee (will receive automatically electronically);
- v) The Standing or Panel Trustee (will receive automatically electronically);

vi) All parties in an adversary proceeding.

3. Compromised Password - The Bankruptcy Court for the District of New Jersey currently has provisions addressing the possibility of a compromised password which threatens either the integrity of the System or the integrity of a document filed. Court notification is required in this circumstance. If however, a Participant simply wants to change a Password, reference should be made to instructions provided in the User's Guide. In the latter instance, notification to the Court is not necessary.

3. Consequences of Electronic Filing

Electronic transmission of a document to the Electronic Case Filing System ("ECFS") consistent with the Local Rules and *Administrative Procedures* of this Court, together with the transmission of a Notice of Electronic Filing ("Notice of Electronic Filing") from the Court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Bankr.P. 5003. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight in order to be considered timely filed that day. **(General Order, para. 5).**

Comment

1. Time of Filing - A filing is deemed made when it is acknowledged by the Clerk's Office through the CM/ECF System's automatically generated Notice of Electronic Filing ("NEF"). The NEF should appear on the Participant's screen virtually simultaneously with the electronic filing of the document, absent a systemic failure (See section 12 relating to Technical Failures). Filing a document electronically does not alter the filing deadline for that document.

2. Official Record - Electronically filed documents are considered to be entries on the official docket.

4. Entry of Court Orders

All orders, decrees, judgments, and proceedings of the Court will be filed in accordance with the *Administrative Procedures*, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk under Fed. R. Bank. P. 5003 and 9021.

All signed orders will be filed electronically by the Court or Court personnel. Any order filed electronically without the original signature of a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner. A Participant submitting a document electronically that requires a judge's signature, must deliver the document in accordance with the *Administrative Procedures*. **(General Order, paras. 8 and 9).**

Comment

1. **Same Force and Effect** - The Court's *Administrative Procedures* specifically state that an electronically filed court order has the same force and effect as an order conventionally filed.
2. **General Order** - The above provision of the Court's General Order contemplates that a judge can authorize personnel to electronically enter an order on the judge's behalf.
3. **General Order** - The above provision provides that a Participant must follow the instructions set forth in the Court's *Administrative Procedures* for submitting a proposed form of order requiring a judge's signature. See also section 5 herein regarding submission of proposed forms of order, as well as the Clerk's instructions set forth on the Court's web site, regarding the required use of templates.

5. Submission of Proposed Forms of Order

All proposed forms of orders may be submitted electronically as outlined below.

1. Electronically submitted orders must comply with all Local Bankruptcy Rules. Subject to the requirements of paragraph 3 below, Orders Shortening Time must be electronically filed with the moving papers in a form substantially the same as Local Forms 1 and 2 as required by *D.N.J. LBR 9013-1(e)*. Orders to Show Cause shall be limited to adversary proceedings in accordance with *D.N.J. LBR 9013 (e)* and *D.N.J. LBR 9075-1*.
2. With the exception of Consent Orders, and Orders submitted under *D.N.J. LBR 9072-2*, electronically filed proposed forms of orders, shall be combined with the application or motion into one docket entry in accordance with Paragraph II A.2 of these *Administrative Procedures*.
3. Electronically submitted orders shall be formatted in accordance with template instructions provided by the Clerk.
4. All orders, including consent orders, must be in PDF text format at the time of submission.
5. The Court will make an electronic copy of the proposed form of order as submitted by the Participant, and sign same electronically by affixing the signature of the presiding judge. Once signed, the Office of the Clerk or the Judge will make the appropriate entry on the ECFS to docket the order.
6. Where a Participant seeks the entry of an emergent order, such as an order shortening time or order to show cause through the ECFS, the Participant shall simultaneously bring such filing, once submitted, to the attention of the Judge's Courtroom Deputy at the e mail addresses set forth in the User's Manual.

7. Notification of defects in an order may be provided by e-mail.

8. Service of signed orders is to be effectuated by the Clerk electronically to Participants. (**Admin. Proc. II.E.**)

Comment

1. Formatting instructions provided by the Clerk - The first page of any proposed form of order, whether submitted electronically or conventionally, must substantially conform with the order templates maintained by the Court, and made available on the Court's website www.njb.uscourts.gov. Signatures approving orders will be affixed electronically providing for little tolerance in this area. Orders which do not comply will be returned as defective.

2. Consent Orders - Participants submitting consent orders electronically should first circulate and sign the order conventionally. The Order bearing the original signatures of the consenting parties is to be maintained by the Participant for the required seven year retention period. A copy of the Consent Order (indicating /s/ _____ for all consenting parties) is to be submitted to the judge's electronic mailbox designated for such purpose, along with a Certificate of Consent by the Participant. This procedure for the submission of a consent order by electronic mail, includes the submission of an application for a Consent Order in Lieu of Motion pursuant to **D.N.J. LBR 9013-1(j)**.

3. Certification of Consent -

A Form Certification of Consent is located on the Court's web site: www.njb.uscourts.gov under Electronic Case Files (Information). The Certificate of Consent submitted by the Participant should certify to the following:

- (a) The terms of the electronically submitted consent order are identical to those set forth in the original consent order;
- (b) The signatures represented by the /s/ _____ on the electronically submitted consent order reference signatures of consenting parties obtained on the original consent order;
- (c) The Participant will retain the original consent order for the required seven year retention period;
- (d) The Participant will make the original consent order available for inspection upon request of the Court or any party in interest; and
- (e) Along with electronic mailing of the consent order and the certificate of consent to the judge, the Participant will simultaneously electronically file the certificate of consent.

The simultaneous electronic filing of the Certificate of Consent serves a dual purpose. That is, by

electronically filing this Certification, the Participant is signing same for all purposes including those under **Rule 9011**. The signing of the Certification (effectuated by its filing with the Court through the use of the Participant's login and password), authenticates not only the Certification itself, but also the underlying consent order which is received by the Court as an electronically mailed document.

4. D.N.J. L.B.R. 9072-2 Orders under the “Five Day Rule” -

Participants submitting proposed forms of order electronically under **D.N.J. L.B.R. 9072-2** should submit same to the judge's electronic mailbox. The electronic mail submission should reflect the names of the parties served both electronically and conventionally. Conventional service of proposed forms of order submitted under this “five day rule” should be effectuated upon non participants. Objections by Participants are to be submitted to the judge's electronic mailbox within five days. Objections by non participants are to be submitted to the Court conventionally within five days, and are then scanned by Clerk's Office Staff and forwarded to the judge's electronic mailbox for consideration.

6. Attachments and Exhibits

Documents, including proofs of claim should be filed electronically in PDF text format on the ECFS. Exhibits, should be submitted electronically as attachments to the document, and if originally produced in hard copy (paper) format exceeding 20 pages in length, shall include only those excerpts of each exhibit that are directly germane to the matter under consideration by the Court. Such exhibits must be clearly and prominently identified as excerpts, and, with the exception of attachments to proofs of claim, the complete exhibit must be made available as a chambers' copy provided to the Court. All exhibits to documents, including proofs of claim, must be made available forthwith to counsel and at any hearing pertaining to the matter. Persons filing excerpts of exhibits do so without prejudice to their right to file additional excerpts or the complete exhibit with the Court at any time. Opposing parties may file additional excerpts if they believe that they are germane.

If the entire exhibit is deemed germane to the document being submitted and the exhibit is in a format that must be electronically imaged, the attorney shall make every effort to electronically image the document(s), including utilization of the Court's facilities.

Comment

1. **Considerations** - One issue that has arisen in most courts using electronic filing relates to attachments or exhibits not originally available to the filer in electronic form, and that must be scanned (or imaged) into Portable Document Format (PDF) before filing. Examples include leases, contracts, proxy statements, charts and graphs. A scanned document creates a much larger electronic file than one prepared directly on the computer (*e.g.*, through word processing). The large documents can take considerable time to file and retrieve.

2. **Excerpting** - It is often the case that only a small portion of a much larger document is relevant to the matter before the court. In such cases, scanning the entire document imposes an inappropriate

burden on both the litigants and the courts. To alleviate some of this inconvenience, the *Administrative Procedures* provide that a Participant must submit as the exhibit, only the relevant excerpts of a larger document, not to exceed 20 pages per exhibit. The responding party then has a right to submit other excerpts of the same document. An exception exists for fee applications.

3. Chambers' Copies - This Procedure is not intended to alter traditional rules with respect to materials that are before the court for decision. Thus, any material on which the court is asked to rely *must* be specifically provided to the court. Hard Chambers' copies of full exhibits, clearly marked as such, must be simultaneously provided with all excerpted filings, with the exception of proofs of claim.

4. Electronic Filing Proofs of Claim - To the extent Participants wish to file proofs of claim electronically, the Court's *Administrative Procedures* allow for it. Official Form 10, the Proof of Claim, already permits creditors to file a summary if the documentation for the claim is voluminous. Attachments to Proofs of Claim are excepted from the Chambers' Copy requirement.

5. Extension of Excerpting Requirement to Conventionally Filed Documents -

In order to accommodate the April 1, 2002 implementation date of ECF, the Court entered an Order dated April 30, 2002 pursuant to which, all documents containing exhibits, with the exception of fee applications, whether submitted electronically or conventionally, are required to conform with the twenty (20) page limitation and full chambers copy requirements of paragraph II. G. of the Court's Administrative Procedures. Notice to the Bar of this Order was also published in the Spring of 2002 in both the New Jersey Law Journal and New Jersey Lawyer.

6. September 2002 addition of CD ROM Option for Submission of Exhibits Exceeding Twenty Pages, Where the Entire Exhibit is Deemed Germane to the Matter-

Pursuant to a September 2002 Notice to the Bar published in the legal periodicals and posted on the Court's Web Site, the Court has added an option to accommodate exhibits exceeding twenty pages where the entire exhibit is deemed germane to the matter under consideration. Motion is deemed germane to Conventionally filed documents which exceed the Court's above referenced exhibit/limitation requirements will be filed, scanned and docketed by the Court Staff. In order to have the exhibit(s) entered as part of the Court's electronic record however, it is required that attorneys exercise one of the following two options:

- (1) Re-submit to the Clerk's Office, in hard copy, the most relevant twenty pages of each exhibit; or
- (2) If it is determined that the entire exhibit is germane to the motion, scan the exhibit onto a CD-ROM and submit the CD ROM to the Court for entry into ECFS.

Whether a conventionally filing attorney exercises option one or two above, pursuant to the Court's Administrative Procedures, all documents which have been excerpted, must be made available in full as a chambers' copy provided to the Court, to any party in interest, and at the hearing on the matter. Notice to the Bar of this change in procedure will be posted in August of 2002.

7. Sealed Documents

The following documents shall be filed conventionally and not electronically unless specifically authorized by the Court:

Document(s) to be filed under seal. However, a motion to file documents under seal may be filed electronically. The order of the Court authorizing the filing of such document(s) under seal may be filed electronically by the presiding judge. A paper copy of the order shall be attached to the document(s) under seal and be delivered to the Clerk of Court. (**Admin. Proc. III.A.**)

Comment

1. **Amendment to Federal Rules** - The Bankruptcy Court for the District of New Jersey recognizes that the Judicial Conference is currently considering whether to recommend amendment of section **107(b)** of the Bankruptcy Code to enhance the sealing provision in an effort to recognize privacy concerns. An amendment of this nature would enhance the section **107(b)** sealing provision to clarify that judges may provide protection from disclosures based upon privacy and security concerns.
2. **File underlying documents conventionally** - It is possible that electronic access to the motion or order may raise the same privacy concerns that gave rise to the need to file a document conventionally in the first place. For this reason, while the *Administrative Procedures* allow for the electronic filing of the motion to file documents under seal, the actual documents to be filed under seal should ordinarily be filed conventionally. In addition, along with the conventionally filed underlying documents, Participants are requested to provide a copy of the electronically filed motion and proposed form of order for the judge's ease of reference.
3. **General Order and Privacy Concerns** - See provision in the Court's *General Order of March 27, 2002*, allowing for issuance of a protective order to address privacy concerns arising from electronic filing.

8. Retention Requirements

Documents that are electronically filed and require original signatures, other than that of the Participant ('third party signatures'), must be maintained in paper form by the Participant for a period not less than seven years from the date of closure of the case or proceeding in which the document is filed. Upon request, the original document must be provided to other parties or the court for review. The document requiring third party signatures must be electronically filed either by (1) submitting a scanned document containing the third party signature; or (2) by submitting a document displaying the name of the person signing the document, preceded by an "s/" and typed in the space where the signature would otherwise appear, e.g., "/s/Jane Doe." (**Admin. Proc. II. C.**)

Comment

1. Retention of Third Party Signatures - Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The *Administrative Procedures* require retention only of those documents containing original signatures of persons *other than the person who files the document electronically*. The Participant's use of a log-in and password to file the document is itself a signature under the terms of Court's *Administrative Procedures*.

2. Conventionally Filed Documents and the Court's Retention - The *Administrative Procedures* places the retention requirement on the Participant who files the document. With respect to conventionally filed documents, which will then be scanned into the ECF, the filer will submit the signed original to the Court, so that the Court can retain it.

3. Retention Period - Courts have varied considerably on the required retention period. The Local Rules and Administrative Procedures Committee of the Bankruptcy Court for the District of New Jersey has required that original documents be retained for a period not less than 7 years from the date of

closure of the case or adversary proceeding in which the document is filed. This retention period tracks with the statute of limitations for malpractice actions under New Jersey statutory law.

4. Practices in Other Districts - Some districts require the filer to retain a paper copy of *all* electronically filed documents. The Judicial Conference has stated that such a requirement seems unnecessary, as it tends to defeat one of the purposes of using electronic filing. Other courts have required retention of “verified documents,” i.e., documents required to be verified under **Fed.R.Bankr.P. 1008** or documents in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury. See, e.g., **28 U.S.C. § 1746** (unsworn declarations under penalty of perjury).

9. Signatures

Filing any document using a login and password issued by the Court, shall constitute the Participant’s signature for purposes of signing the document under Fed.R. Bankr.P. 9011. The name of the Participant under whose log-in and password the document is submitted must be displayed by an “s/” and typed in the space where the signature would otherwise appear, e.g., “/s/Jane Doe.”

No person shall knowingly utilize or cause another person to utilize the password of a Participant unless such a person is an authorized employee of the law firm.

Documents that are electronically filed and require original signatures, other than that of the Participant (“third party signatures”), must be maintained in paper form by the Participant for a period not less than seven years from the date of closure of the case or proceeding in which the document is filed. Upon request, the original document must be provided to other parties or the court for review. The document requiring third party signatures must be electronically filed either by (1) submitting a scanned document containing the third party signature; or (2) by submitting a document displaying the name of the person signing the document, preceded by an “s/” and typed in the space where the signature would otherwise appear, e.g., “/s/Jane Doe.” (**Admin. Proc. II. C**).

Comment

1. Use of log-in and password constitutes signature - Signature issues are a subject of considerable interest and concern. The CM/ECF System is designed to require a login and password to file a document. The Court’s *Administrative Procedures* and *General Order* of March 26, 2002 provide

that use of the login and password constitutes a signature, and assures that such a signature has the same force and effect as a written signature for purposes of the Federal Rules of Bankruptcy Procedure, including Fed.R.Bankr. P. 9011, and any other purpose for which a signature is required on a document in connection with proceedings before the court.

2. **The “display” requirement - s-slash** - Some users of electronic filing systems have questioned whether an s-slash requirement is worth retaining. The Court’s view is that an s-slash is necessary; otherwise there is no indication that documents printed out from the website were ever signed. The s-slash provides some indication when the filed document is viewed or printed that the original was in fact signed. Note the use of the word “display” in the above provision to denote that there has been a signing of a document. With the exception of notation of “Hearing Date,” the requirements of **D.N.J. L.B.R. 9004-2**, *Caption - Papers, General* apply.

3. **Authorized Agent Requirement** - The second paragraph of the *Administrative Procedure* cited above, does not require a Participant to personally file his or her own documents. The task of electronic filing can be delegated to an authorized agent, who may use the login and password to make the filing. However, use of the login and password to make the filing constitutes a signature by the Participant under the Procedure, even though the Participant does not do the physical act of filing.

4. **Third Party Signatures** - Issues arise when documents being electronically filed have been signed by persons other than the filer, *e.g.*, stipulations and affidavits. The Court’s *Administrative Procedures* provides for electronic filing by a Participant, with a seven year retention requirement as to the originals.

10. Service of Documents by Electronic Means

1. General Rule: Except as otherwise provided in paragraph 2 below, *Consent to Electronic Service*, all documents required to be served shall be served in paper (i.e. “hard copy”) form in the manner mandated by the applicable law and rules.

2. Consent to Electronic Service: Whenever service is required to be made on a Participant who has agreed to electronic service as defined at paragraph I.B.6 above, the Court’s automatically generated “Notice of Electronic Filing” constitutes service. If ECFS service is impracticable, service may be made by hand or by any other means authorized by Fed. R. Bankr.P. 7005.

3. In addition to electronic service by the ECFS as identified in paragraph 2, service of documents in hard copy, shall be required in the following circumstances:

(a) Service is required to be made in accordance with Fed. R. Bankr.P. 7004, 9014 and 9016.

(b) The Federal Rules of Bankruptcy Procedure, District of New Jersey Local Bankruptcy Rules, or an order of the Court requires delivery or service upon a state or federal governmental entity, including, the United States Attorney. (**Admin. Proc. II.B.**)

Comment

1. **Conventional Service of Process Required** - The new amendments to the **Federal Rules, (Fed.R.Bankr.P. 7005, Fed.R.Civ.P. 5(b),6(e) and 77, and Fed. R. Bankr.P. 9006(f) and 9022)**, effective December 1, 2001, authorizing service of documents by electronic means, do not permit

electronic service of process for purposes of obtaining personal jurisdiction (i.e., **Rule 7004** service). Therefore, the Bankruptcy Court for the District of New Jersey requires conventional service be effectuated where service is required under **Fed. R. Bankr.P. 7004, 9014 and 9016**.

2. Notice of Electronic Filing (NEF) - The CM/ECF System automatically generates a Notice of Electronic Filing at the time a document is filed with the System. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically.

3. NEF Constitutes Service in Limited Circumstances - The CM/ECF System automatically sends this Notice to all case Participants registered to use the Electronic Filing System. The Bankruptcy Court for the District of New Jersey allows this notice itself to constitute service as set forth in the Court's *Administrative Procedures*, with the significant exceptions to electronic service set forth above, for adversary complaints, and initiating motions in contested matters.

The December 2001 amendment to **Fed. R. Civ.P. 5(b)(2)(D)** requires the promulgation of a local rule if a court wants to authorize parties to use its transmission facilities to make electronic service. It is therefore anticipated that this Procedure will be elevated to the status of a local rule. In addition, express written consent to electronic service through the Court's transmission facilities as further required by **Fed. R. Civ.P. 5(b)(2)(D)**, is provided by the Participant's signature on the Court's registration form.

4. Three Additional Days - The December 2001 amendment to **Fed.R.Bankr. P. 9006(f)** provides that the three additional days to respond to service by mail will apply to electronic service as well. The Committee Note on the parallel amendment to **Fed.R.Civ.P. 6(e)** states:

Electronic transmission is not always instantaneous, and may fail for any number of reasons. It may take three days to arrange for transmission in readable form. Providing added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that make electronic service ever more attractive.

5. D.N.J. L.B.R. 9013-3 Certificate of Service - Motions - Pursuant to the Court's Local Rule, **D.N.J. L.B.R. 9013-3**, all moving papers, answering papers, and cross motions must be supported by a certificate of service. The Local Rule indicates "the certificate of service shall identify the relationship to the case of each party served." The Rule was amended in May of 2001. The 2001 Comment indicates that this Rule was amended to clarify that where electronic filing is utilized, a certificate of service may be filed subsequent to the filing of the moving papers, answering papers, and cross motions."

Pursuant to section II. B.2 of the Court's *Administrative Procedures*, "Whenever service is required to be made on a Participant who has agreed to electronic service as defined at paragraph I B. 6 above, the Court's automatically generated "Notice of Electronic Filing" ("NEF") constitutes service." In such circumstances, where under the Court's Administrative Procedures, the NEF itself constitutes service, the Certificate of Service must specify the parties served electronically through the Court's electronic mail

notification system and the parties served conventionally by first class mail. The Certificate should list the parties in each category by name. If the Certificate currently includes the mailing addresses used, as the Comments to **D.N.J. L.B.R. 9013-3** indicate, that practice should continue for reference to those parties receiving service by first class mail.

Participants are to be aware that pursuant to para. II.B. 3 of the Court's *Administrative Procedures*, in addition to electronic service by the ECFS through the NEF, service of documents in hard copy must be effectuated with respect to the following circumstances:

(A) Service is required to be made in accordance with Fed. R. Bankr.P. 7004, 9014 and 9016,

(B) The Federal Rules of Bankruptcy Procedure, District of New Jersey Local Bankruptcy Rules, or an order of the Court requires delivery or service upon a state or federal governmental entity, including, the United States Attorney. (**Admin., Proc. II. B. 3**).

11. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in the ECFS, the Clerk will transmit to Participants in the case, in electronic form, the Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R.Bankr.P. 9022. The Clerk must give notice in paper form, in accordance with the Federal Rules of Bankruptcy Procedure, to a person who has not agreed pursuant to para. I.B.6 of the Court's *Administrative Procedures*, to receive electronic notice and service. (**General Order, para. 10**)

Comment

1. **Notice of Orders under Fed. R. Bankr.P. 9022** - Pending amendments to **Fed.R.Bankr.P 9022** authorize electronic notice of court orders where the parties consent. The Court's *Administrative Procedures* provide that for all Participants, electronic notice of the entry of an order or judgment has the same force and effect as traditional notice. The CM/ECF System automatically generates and sends a Notice of Electronic Filing upon entry of the order or judgment. The Notice contains a hyperlink to the document.

12. Technical Failures

A Participant whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(General Order, para. 11)

Comment

1. **Court's Web site inaccessible** - CM/ECF is designed so that Participants access the Court through its Internet website. The *Administrative Procedures* address the possibility that a party may not meet a filing deadline because the Court's website is not accessible for some reason. Cf. **Fed.R.Bankr.P. 9006(a)** (permitting extension of time when "weather or other conditions have made the clerk's office inaccessible"). The provision also addresses the possibility that the Participant's own unanticipated system failure might make the filer unable to meet a filing deadline.

2. **Court's Discretion to Grant Relief** - The *Administrative Procedures* do not require the Court to excuse the filing deadline allegedly caused by a system failure. The Court has discretion to grant or deny relief in light of the circumstances.

13. Public Access

A. Internet Access Any person or organization, may access the Court's Internet site at: www.njb.uscourts.gov. Access to the docket through the Internet site will require registration with the Pacer Billing Center (1-800-676-6856). (**Admin. Proc. IV A.**)

Public Access at the Court Access by the public to the documents filed in the ECFS and to the ECFS docket is available in the Office of the Clerk for viewing during regular business hours, Monday through Friday. (**Admin. Proc. IV B.**)

Privacy In connection with the filing of any material in an action assigned to the ECFS, any person may apply by motion for an order limiting electronic access to or prohibiting the electronic filing of certain specifically-identified materials on the grounds that such material is subject to privacy interests and that electronic access or electronic filing in the action is likely to prejudice those privacy interests. (**General Order, para. 12**)

Comment

1. **Judicial Conference Committee** - A Subcommittee of the Judicial Conference Committee on Court Administration and Case Management is currently assessing the privacy concerns arising from electronic case filing. *See Report on Privacy and Public Access to Electronic Case Files (June 26, 2001)* which was approved by the Judicial Conference on September 19, 2001.

For more information on privacy issues, *See Also* the following web site: www.privacy.uscourts.gov.

2. **Limit Remote Access** - The practice of the Bankruptcy Court for the District of New Jersey is consistent with Judicial Conference policy to limit remote public access to electronic case files to those who have obtained a PACER password.

3. **Protective Order** - The third paragraph referenced above is not intended to create substantive rights. It simply highlights the fact that a person may apply for a protective order when Internet access to a case file or document is likely to result in the loss of that person's legitimate interest in privacy.

14. Creditor Matrix -

A matrix submitted electronically shall be prepared in accordance with instructions provided by the clerk. **(D.N.J. L.B.R. 1007-2)**

Comment

1. **D.N.J. L.B.R. 1007-2 Mailing - List or Matrix** - This Local Rule sets forth the requirements for submission of a creditors' matrix to the Court. The requirements, with the exception of paragraph (d) (i.e. "A matrix containing 50 or more parties shall be submitted in the form of a computer diskette accompanied by a paper copy. The diskette shall be prepared in accordance with instructions provided by the clerk."), apply to a matrix submitted electronically. With respect to the requirement of paragraph (d), Participants of the ECFS may file a matrix containing 50 or more creditors electronically without the submission of a diskette.

August 5th, 2002

